

FOREIGN CORPORATIONS DOING BUSINESS IN TEXAS

I. INTRODUCTION

The state of Texas is a very friendly state for foreign companies investing or doing business in Texas. Texas does not have a state income tax for foreign companies and no income tax or estate tax for foreign persons, and but it does have a franchise tax for certain foreign entities doing business. In addition, the state has very pro-business and asset protections advantages that can provide protection against lawsuits and other legal contingencies.

But in order to benefit from the advantages that Texas offers a foreign entity must register in Texas with the Secretary of State. In addition, the federal tax laws provide that if a foreign corporation is deemed to be doing business in Texas and has a permanent establishment in the USA it will be required to register with both the state and federal tax authorities as a taxpayer and report its business and investment activities for tax purpose. It should be noted that a foreign corporation doing business in the USA is subject to all the tax laws and requirements like any other U.S. corporation and must file corporate tax returns and disclosures (Form 1120F, 5472, etc).

II. FOREIGN ENTITIES – DEFINED

A foreign entity is defined as an entity formed under the laws of a jurisdiction of another country or simply another state, and it must register with the Secretary of State. A foreign company does not necessarily mean that it is from another country. If an entity was formed under the laws of any jurisdiction other than Texas, the organization is a “foreign entity.” It is a foreign company if your company was formed in another state and is doing business in another state where it was not formed. For example, a company that was formed in California is a foreign company in Texas.

A foreign entity doing business and certain investing activities in the State of Texas must register with the Secretary of State and state tax authorities in order to lawfully invest or do business in the state of Texas. In addition, it must register with the federal tax authorities (IRS) in order to get proper tax registrations and numbers. There are many legal and tax implications in both the federal and state level if you are not properly registered.

III. REGISTRATION REQUIREMENTS

According to the Texas Business Organization Code (TBOC), a foreign entity is required to register to do business in Texas if it intends to do business in the State of Texas. No foreign corporation or company shall have the right to transact business in this State until it is registered with the Secretary of State. Section 9.001(a) of the Texas Business Organizations Code (TBOC) requires that in order to transact business in the State of Texas, a foreign entity must register if the entity is:

- Foreign corporations
- Foreign limited partnerships
- Foreign limited liability partnerships
- Foreign limited liability companies
- Foreign business trusts
- Foreign real estate investment trusts
- Foreign cooperatives
- Foreign public or private limited companies
- Any other foreign entity that, if formed in Texas, would be formed as a corporation, limited partnership, limited liability company, professional association, cooperative, or real estate investment trust; and
- Any other foreign entity that affords limited liability under the law of its jurisdiction of formation for any owner or member.

IV. FAILURE TO REGISTER – LEGAL RISKS

If you are not registered in Texas, you cannot bring a lawsuit in any of the state's courts or will not be able to defend the entity in the action, suite, or proceeding. Moreover, you will be subject to a civil penalty equal to all the fees and taxes you should have paid if it were registered plus additional penalties, interest, and late filing fees. The Attorney General may bring suit to recover amounts due to the State of Texas under the Texas Business Organizations Code.

Furthermore, such entities are also required to register with the federal tax authorities (Internal Revenue Service) and subject to federal income tax on its U.S. source income.

V. CONCLUSION

A foreign entity investing or doing business in Texas must determine if its required to register with the Secretary of State.

We are Tax Attorneys and Advisors, we strive to provide our clients the highest quality of legal and tax representation in the complex area of tax law.

This alert has provided only general information and specific factual scenarios may change any conclusions that would apply.

We strongly recommend you consult a Tax Attorney regarding your particular case.

Should you need additional information it will be our pleasure to assist you.

Sincerely,

Ruben Flores, Attorney & CPA